



# Job Ready Services

Job Ready Services, LLC

August 2008

## The ADA Restoration Act

**Introduced:** July 2007

**Purpose:** To restore the intent and protections of the ADA act of 1990.

The ADA restoration act may become effective in January 2009. The sponsors of this Act indicate that the courts have misinterpreted the term of “disability” and have excluded those persons with serious health conditions like epilepsy, diabetes and cancer. Therefore, in order to define disability more effectively, the sponsors of this Act have eliminated the “substantial limitation” on a “major life activity” requirement of the ADA. In addition, the Act will disallow courts to consider “mitigating measures” when considering whether a disability is “in remission, episodic or latent.” For example, a person with diabetes that is controlled with medication will be considered “disabled” merely because they have the disease. Prior to this act, this person would not be considered disabled because their disease did not “substantially limit a major life activity”, as they were able to control it with medication.



Whatever side you are on in the ADA restoration Act debate, one thing is for sure—Litigation and confusion in the courts will certainly impact both workers and employers. As employers, it will be more important than ever to make sure your job descriptions delineate the physical demands and essential functions of the job clearly.

**Proponents of the Act list the following benefits** (derived from American Association of People with Disabilities website):

- Instead of persons having to prove that they have a disability, they will merely have to prove that they were discriminated against “on the basis of disability.”
- The bill will prevent reverse discrimination, in that it clarifies that discrimination “on the basis of disability” means discrimination against a person *with a disability*.
- Employers will still be free to argue that a person does not have the qualifications for a job, i.e., a “qualified individual with a disability.”
- Switches the focus from having to prove a disability exists to the alleged misconduct of the employer accused of discrimination.

**Opponents of the Act list the following drawbacks** (Heritage Foundation website):

- By removing the terms “substantially limits a major life activity”, the bill will essentially deem everyone disabled—from persons who need eyeglasses to anyone who has ever had tennis elbow.
- Employers will have the burden of providing accommodations for minor “impairments” and will face great risks in firing or disciplining those persons who have such minor “impairments.”
- Doctors will not be able to prove some impairments, such as chronic headaches and irresponsible employees could fake illnesses, skip work and demand that the employer give them time off work whenever they have symptoms.
- Truly disabled individuals will be denied job reassignments by persons who have “fleeting” impairments. As a result, if no slots are available, the truly disabled persons could be laid off.
- The Act will water down the “at will” employment as well as the destroy the employer-employee relationship. If everyone is disabled, then no one is.

### News and Upcoming Events

#### Next Lunch & Learn

**Thursday, August 28, 2008**

Dr. Kevin Speer

12:00-1:00pm

Job Ready office

“Shoulder Injuries”

OHN, CCM & CRC credits approved—I hour

#### Reminder:

Job Ready has several CEU-approved presentations for both Case Managers and Adjusters. We will be glad to come to your facility—just contact Michelle Morgan to schedule.

**Do you have suggestions for future Lunch & Learns? Let us know!**

#### **Employers:**

Consider attending the WorkSTEPS(employment testing) Symposium in San Antonio, TX in August. Just visit their website: [www.worksteps.com](http://www.worksteps.com) and click on the symposium link!

#### Other Job Ready Services:

- Employment testing
- Ergonomic Assessments by a Certified Ergo Assessment Specialist
- Work conditioning
- Functional Capacity Evals
- Workplace training
- Fit for Duty Testing

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For more information on any of these events or services, please contact Michelle Morgan:  
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